PUBLIC PROSECUTOR

v.

TEO KWANG KIANG

HIGH COURT, SINGAPORE
S RAJENDRAN J
[MAGISTRATE'S APPEAL NO. 1 OF 1989]
28 SEPTEMBER 1991

CRIMINAL LAW: *Charge under Environmental Public Health Act 1987 - Intention - Absence of knowledge that vegetables were contaminated - Whether defence - Interpretation of Act - Strict liability - Approval by Ministry - Whether relevant - Environmental Public Health Act 1987, ss. 40(1), 42(1).*

The respondent was charged with an offence under s. 40(1) of the Environmental Public Health Act 1987 (the Act) which was punishable under s. 42(1) of the Act.

The District Judge however acquitted the respondent, accepting his claim that he had no intention of selling the vegetables and that the vegetables would only be sold after he had obtained the approval of Health Inspectors. This the trial Judge held had cast a sufficient doubt on the prosecution case that the vegetables were "intended for human consumption". The learned Judge also took the view that the absence of knowledge that the vegetables were contaminated was a good defence to the charge.

This was the appeal by the Public Prosecutor against the said acquittal.

Held:

[1] On a literal reading of s. 40(1) of the Act, there was no word or phrase that suggests that the essence of the offence was that the person who had in his possession the article intended for human consumption should know or be aware that the article was unfit for such purpose.

[2] The policy of the Act was quite clearly the protection of the public, it was designed to prevent the sale of food for human consumption where the food was dangerous to human health. Public safety requires that the vegetable importer should bear the consequence of importing food unfit for human consumption. The difficulties that an importer will face in ensuring that the vegetables are safe for human consumption are difficulties that the importer will have to live with and do his best to overcome. Therefore, the imposition of strict liability was in this case necessary for the protection of the public and this was what the legislature intended when it enacted s. 40(1).

[3] The inspections conducted by the public health officers under these provisions are in pursuance of their enforcement functions. It cannot be said that by its vigilance the Ministry has exonerated the importer or other persons selling food for human consumption from his obligation under s. 40(1) of the Act to ensure that the food is fit for human consumption. The respondent cannot, merely because the Ministry regularly carries out these inspections, push the responsibility of ensuring that the vegetables are fit for human consumption on to the Ministry.

[4] Approval of the vegetables by the Ministry was an irrelevant consideration; further 'non seizure' cannot be construed as an approval by the Ministry for the respondent to violate s. 40(1) of the Act and would not constitute a "lawful excuse" for the possession of food

intended for human consumption which was unfit for such purpose. In the context of the Act the so-called "approval" by the Ministry is no more than the fact that the public health officer has not seized the article for examination.

[5] It was clear that the respondent had the vegetables in question in his possession, he had imported them for the purpose of human consumption and the vegetables had so high a quantity of carbon disulphide on them that they were not fit for human consumption.

[Appeal allowed; respondent convicted as charged.]

Cases referred to:
Gammon Ltd. v. AG of Hong Kong [1985] 1 AC 1 ***(foll)***
Hobbs v. Winchester Corp. [1910] 2 KB 471 ***(foll)***
Mallinson v. Carr [1891] 1 QB 48 ***(foll)***

Legislation referred to:
Environmental Public Health Act 1987 [Sing], ss. 40 (1), (2), (3), (6), (7), 42(1)
Public Health Act 1875 [UK], s. 117

For the appellant - Jennifer Marie; DPP
For the respondent - P.T. Wong; M/s Ng & Ng

JUDGMENT

S Rajendran J:

This is an appeal by the public prosecutor against the order of a District Judge acquitting the respondent on the following charge on which he was tried:

> You, Teo Kwang Kiang
>
> NRIC No. 0323429-J
>
> are charged that you on 10 November 1987 at about 9.15 a.m. at Pasir Panjang Wholesale Centre (Vegetable Auction Hall) without lawful excuse had in your possession, a food intended for human consumption, to wit snow peas (vegetable) which was unfit for human consumption, in that it contained 38.34 ppm of dithiocarbamathes (carbon disulphide), and you have therefore committed an offence under s. 40(1) of the Environmental Public Health Act 1987, and punishable under s. 42(1) of the aforesaid Act.

At the trial the prosecution led evidence that in the morning of 9 November 1987, at Pasir Panjang Wholesale Market, officers from the Ministry of Environment took a sample of snow peas from a basket of peas in the possession of the respondent. The sample of snow peas was sent for analysis and was found to contain 38.34 ppm of carbon disulphide. Dr. Chng Ai Lee, an analyst with the Primary Production Department, testified that carbon disulphide in excessive quantities causes hepatoma and is also carcinogenic and that the permissible level for human consumption was less than 5 ppm. She told the Court that the sample containing 38.34 ppm of carbon disulphide was unfit for human consumption.

The respondent at the trial did not challenge the evidence of Dr. Chng nor did he dispute that he was in possession of the basket of snow peas. The respondent said that he was a vegetable importer and that he had imported the snow peas in question from Cameron Highlands. He told the Court that the Ministry of Environment had imposed very tight controls and procedures on the import and sale of vegetables. Under these procedures he would not sell any vegetables until the Health Inspector had inspected the vegetables and approved them for sale. If the Health Inspector did not approve any particular basket of vegetables the Health Inspector, after taking a sample; would seal and set aside the basket. If, upon

analysis, the sample was found to be unfit for human consumption the basket of vegetables would be destroyed in the presence of a Health Inspector; if the sample was found fit the basket would be released to the importer for sale.

The learned District Judge accepted the respondent's claim that although he imports vegetables into Singapore for purpose of sale he had, in view of the stringent controls of the Ministry, no intention to sell any of the vegetables until approval to do so was given. That being so the trial Judge held that the respondent had cast a sufficient doubt on the prosecution case that this basket of snow peas was "intended for human consumption". The learned trial Judge also took the view that absence of knowledge that the vegetables were contaminated was a good defence to the charge. In the words of the District Judge:

> The defendant imports the vegetables on consignment from West Malaysia. He has no control at the other end as to whether the vegetables sent here is fit for human consumption or not. In answer to a question posed by the Court, the defendant said that he had no agent at West Malaysia to check the vegetables. He only received the consignment when it arrived at Pasir Panjang Wholesale Centre. That was why he had to wait for the inspection by the Ministry of Environment inspector and, before approval was obtained, the vegetables could not be offered for sale. This procedure was imposed by the Ministry of Environment and the defendant had followed this procedure strictly over the years.
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> The prosecuting officer said that s. 40(1) of the Act is an absolute liability provision and the words importing *mens rea* are not present in s. 40(1). The vegetables were in his possession and therefore he was guilty of an offence under the Act.
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> If this argument is accepted, then the Act would be oppressive and result in injustice. The defendant has no control of what vegetables would be sent to him on consignment. That is why he has to wait for the inspection and approval of the health inspector before the vegetables are offered for sale.
>
> What more could he have done? Does it mean that he has to go to West Malaysia personally each time to carry out tests to ensure that the vegetables he has imported are fit for human consumption? If that is so, then why should strict rules be laid down by the Ministry of Environment and the Public Health inspector's approval has to be obtained to ensure that the vegetables are fit for human consumption when they arrive in Singapore?
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> If, on the other hand, the defendant had sold or offered to sell that basket of snow peas before approval was obtained, the situation would be different because all the ingredients in the charge would have been proved against him. But the facts showed otherwise.

There is a presumption of law that *mens rea* is required before a person can be held guilty of a criminal offence. This presumption, as pointed out by Lord Scarman in the case of *Gammon Ltd. v. AG of Hong Kong* [1985] 1 AC 1 is particularly strong where the offence is "truly criminal" in character. It can be displaced where the statute is concerned with an issue of social concern and public safety where it can be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited Act.

In *Hobbs v. Winchester Corp.* [1910] 2 KB 471 the Court had to consider s. 117 of the Public Health Act 1875, which provided that where any meat unfit for the food of man was exposed for sale, the person to whom the meat belonged or in whose possession it was shall be liable to a penalty. The question that arose for consideration was whether the offence under s. 117 was complete by the mere fact of exposing for sale and selling meat unfit for human consumption or whether it was necessary to prove in addition that the butcher knew it was unfit. Cozens-Hardy MR at p. 478 of the report said:

> In my opinion the offence was complete when the unsound meat was exposed for sale and sold, and I think it is not relevant for the butcher to say 'I did not know and my men did not know and neither I nor they with such knowledge as we had having regard to our positions in life could have ascertained that the meat was unsound, although experts have subsequently given evidence which has satisfied the arbitrator that such was the case.

and, later in his judgement Cozens-Hardy MR quoted with approval the *dicta* of Stephen J in the earlier case of *Mallinson v. Carr* [1891] 1 QB 48 when in construing the same provision Stephen J said:

> It was argued that this construction would render liable to conviction persons who were ignorant of the fact that the meat found in their possession was unfit for human food, and it was said to be an unreasonable intention to impute to the legislature. I do not think that is the proper way to interpret an Act of Parliament. The true rule is to take the words used in their ordinary and natural sense, and to construe them accordingly, without reference to any supposed intention of the legislature which cannot be gathered from the natural and ordinary meaning of the words. The short result is that a person in possession of meat intended for human food and unfit for human food is liable to conviction; and, for my own part, I think he is liable whether he knows or does not know that the meat was unfit for human food.

The two other Judges in *Hobbs v. Winchester Corp*. used equally strong words in rejecting the argument that as the disease could not reasonably be discovered except by an expert strict liability should not be imposed. At pp. 484 and 485 of the report Kennedy LJ says:

> Speaking for myself, I am of opinion that to apply such a test of responsibility as is suggested would be on public grounds most dangerous. A man takes upon himself to offer goods to the public for their consumption with a view to making profit by the sale of them. These goods may be so impregnated with disease as to carry death or at any rate serious injury to health to any one consuming them. To say that the difficulty of discovering the disease is a sufficient ground for enabling the seller to excuse himself on the plea that he cannot be reasonably expected to have the requisite technical knowledge or to keep an analyst on his premises, is simply to say that the public are to be left unprotected and must submit to take the risk of purchasing an article of food which may turn out to be dangerous to life and health. I think that the policy of the Act is this: that if a man chooses for profit to engage in a business which involves the offering for sale of that which may be deadly or injurious to health he must take that risk, and that it is not sufficient defence for any one who chooses to embark on such a business to say 'I could not have discovered the disease unless I had an analyst on the premises'. He has chosen to engage in that which on the face of it may be a dangerous business and he must do so at his own risk.

Section 40(1) of the Environmental Public Health Act 1987, reads as follows:

> (1) No person shall, without lawful excuse, have in his possession any article of food intended for human consumption which is unsound or unfit for human consumption.

On a literal reading of the section there is no word or phrase in it that suggests that the essence of the offence is that the person who has in his possession the article intended for human consumption should know or be aware that the article is unfit for such purpose.

By s. 40(2) of Environmental Public Health Act 1987, a public health officer is empowered to enter into and inspect any place used for the sale of food intended for human consumption and search for and examine articles of food intended for human consumption. If it appears to the officer that any such article is unfit for human consumption, the officer is empowered, under s. 40(3) of the Act, to seize the article. Any person dissatisfied with the seizure may, under s. 40(6) of the Act, within 48 hours complain to a Magistrate's Court. The Court after hearing the complaint may either confirm or disallow the seizure wholly or in part and may

order compensation to the person for any loss or depreciation resulting from the seizure. If within 48 hours after such seizure no complaint has been made, or if such seizure is confirmed, the articles seized become, under s. 40(7) of the Act, the property of the Government and is to be destroyed so as to prevent the article from being used for human consumption. The policy of the Environmental Public Health Act is quite clearly the protection of the public: it is designed to prevent the sale of food for human consumption where the food is dangerous to human health.

The comments referred to above from the case of *Hobbs v. Winchester Corp*. have, in my view, as much application to the sales of vegetables as they have to the sale of meat. Public safety requires that the vegetable importer should bear the consequence of importing food unfit for human consumption. The difficulties that an importer will face in ensuring that the vegetables are safe for human consumption are difficulties that the importer will have to live with and do his best to overcome. In my view the imposition of strict liability is in this case necessary for the protection of the public and I have no doubt that that is what the Legislature intended when it enacted s. 40(1).

The remaining issue is whether there is merit in the respondent's plea and in the District Judge's finding that as the respondent would not sell any of the vegetables until he obtained the "approval" of the health officers, the prosecution has not proved that the snow peas in this case were intended for human consumption.

There is no provision in the Environmental Public Health Act under which health officers are required or empowered to "approve" articles of food as being fit for human consumption. The provisions under which the Ministry has been acting in carrying out its daily inspection of vegetables at the wholesale market are the provisions contained in s. 40 which I have referred to earlier, in particular subsection (2) and (3) of s. 40 which give public health officers the power to carry out inspection and to seize articles of food suspected to be unfit for human consumption. The inspections conducted by the public health officers under these provisions are in pursuance of their enforcement function.

It would appear that in recent years the Ministry has been extra vigilant and has been carrying out these inspections every morning as the vegetables are brought into the wholesale market. Such vigilance is in the public good and is to be commended but surely it cannot be said that by its vigilance the Ministry has exonerated the importer or other person selling food for human consumption from his obligation under s. 40(1) of the Act to ensure that the food is fit for human consumption. The respondent cannot, merely because the Ministry regularly carries out these inspections, push the responsibility of ensuring that the vegetables are fit for human consumption on to the Ministry.

The learned trial Judge in the last para of his grounds of decision (quoted above) states that if the respondent had sold or offered to sell the snow peas before approval was obtained the situation would be different. I cannot see any difference in the two situations. Approval or otherwise by the Ministry is, in my view an irrelevant consideration. The offence is committed if the respondent has in his possession any article of food intended for human consumption which is unfit for such purpose. The fact that the vegetables will not be sold until after Government officials "approve" the vegetables does not, in my view, detract from the fact that the vegetables are intended for human consumption. It cannot be in doubt that it is for the purpose of human consumption that the respondent imported the snow peas from Cameron Highlands. In the context of the Act the so-called "approval" by the Ministry is no more than the fact that the public health officer has not seized the article for examination.

Should it transpire that any article or food not seized is unfit for human consumption, the respondent would nevertheless be guilty. Such a "non-seizure" cannot be construed as an approval by the Ministry for the respondent to violate s. 40(1) of the Act and would not constitute a "lawful excuse" for the possession of food intended for human consumption which is unfit for such purpose.

There is provision in the Act (s. 117) for the Commissioner of Public Health to exempt any person or class of persons from any of the provisions of the Act. It has not been suggested that there was any such exemption under s. 117 in respect of the respondent.

It is clear to me that the respondent had the snow peas in question in his possession, he had imported them for the purpose of human consumption and the snow peas had so high a quantity of carbon disulphide on them that they were not fit for human consumption. On these facts the respondent was guilty of the offence charged.

Accordingly, I allow this appeal and convict the respondent as charged. I will hear the parties on sentence.

Also found at [1992] 1 CLJ 318